IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1220 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No : NO

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy of the judgement? No : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No : NO

5. Whether it is to be circulated to the Civil Judge? No :

JIVIBEN GOVABHAI CHAMAR

Versus

UDYAN SAHAYAK

Appearance:

MRS DT SHAH for Petitioner

MR RJ OZA for Respondent No. 1

MR MUKESH R SHAH for Respondent No. 3, 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 01/07/1999

ORAL JUDGEMENT

1. Learned Counsel for the parties have been heard on the admission of this petition. With their consent the petition is being finally disposed of at the admission stage.

2. The prayer of the petition in this writ petition

is for quashing the order dated 30.11.1998 passed by the respondent No.4 refusing to refer the industrial dispute allegedly raised by the petitioner before the respondent No.4. Counter Affidavit has been filed from the side of respondents today.

3. The impugned order is contained in Annexure : E to the writ petition which runs as follows :

"It is found that the workman did not work for more than 240 days in any calender year prior to her alleged termination. As such she is not eligible for any protection under the provisions of the I.D. Act."

Learned Counsel for the petitioner has contended that itis practically adjudication of dispute which was not within the jurisdiction of the respondent No.4. On the other hand, according to him, if industrial dispute was raised then the respondent No.4 had no option but to refer the same to the comptent Labour Court or Tribunal for adjudication.

4. Learned Counsel for the respondents, on the other hand, has referred to a pronouncement in Hassam Noor Mohmed v/s. State of Gujarat & ors., reported in 1996 (2) G.L.H. 149 and placing reliance upon various pronouncements, namely, A.I.R. 1969 (Labour and Industrial Cases) 1484, State of Bombay v/s. K.P.Krishnan reported in AIR 1960 SC 1223, Bombay Union of Journalists v/s. State of Bombay, reported in AIR 1964 SC 1617, referred in Para : 7 of this Judgment of this court, has contended that the respondent No.4 had jurisdiction to primafacie consider whether there was any industrial dispute or not and according to him it is not every allegation raising industrial dispute which is required to be referred. Thus, the contention has been that unless it is prima facie shown that there existed industrial dispute the respondent No.4 was justified in not referring the same.

5. The cases referred in Para : 7 of the Judgment in Hassam Noor Mohmed (supra) mainly relates to prima facie existence of industrial dispute. It was specifically held by the Apex Court in State of Bombay v/s. K.P.Krishnan (supra) that ..."When the appropriate Government considers the questions as to whether any industrial dispute should be referred for adjudication or not, it may consider, prima facie the merits of the dispute and take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not. It is true

that if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly on disputed questions of fact, the appropriate Government can not purport to reach final conclusions, for that again would be the province of the Industrial Tribunal. But it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under Section 10(1) read with Section 12(5), or not."

6. It is, therefore, clear from the above observation that in the first place appropriate Government is entitled to look into prima facie whether there existed any industrial dispute or not. Such dispute may involve questions of law as well as questions of fact. So far as dispute relating to question of law is concerned the appropriate Government can not decide the same and it is bound to refer it to the Industrial Tribunal or Court for adjudication. Likewise if there is prima facie disputed question of fact it has also to be referred to the Industrial Tribunal, but if such disputed question of fact is prima facie lacking then only reference can be refused.

7. This Court in Ramesh Manilal Harijan V/s. Project In-charge, Bharat Petroleum Ltd. & ors., Special Civil Application No. 7820 of 1998, where identical question was involved whether the workman has completed 240 days in calender year or in any preceding 12 months from the date of retrenchment,held that the appropriate Government could not enter into this question and was bound to refer the dispute to the Tribunal. This observation applies with full force to the facts of the case before me.

8. No doubt in the counter Affidavit filed today details have been given in Para 5.3 indicating that the petitioner did not complete 240 days in a year from 1983 to 1996, but it is evident that this material was not before the appropriate Government when the impugned order was passed. As against this in Para : 3 of the writ petition it is clearly alleged that the petitioner had completed more than 240 days continuously every year in her employment. Thus there was allegation of the petitioner that she completed 240 days in every calender year whereas there was denial from the side of the respondent that she did not complete period of 240 days.

Since there was no supporting material for the denial before the appropriate Government there existed valid industrial dispute which was likely to be referred by the appropriate Authority. In not doing so the appropriate Authority committed manifest error of law in appreciating the provisions of Section 10 of the Act. The impugned order, therefore, can not be sustained. It has, therefore, to be quashed.

9. In the result the petition is allowed. The impugned order dated 30.11.1998 is hereby quashed. The respondents are directed to refer the industrial disputes raised by the peitioner to the competent Tribunal or Labour Court in accordance with law within two months from the date of receipt of this order. No order as to costs.

sd/-

Date : July 01, 1999 (D. C. Srivastava, J.)

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